

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 05-276
The Application of Access Charges to)	
IP-Transported Calls)	

COMMENTS OF CENTURYTEL, INC.

CenturyTel, Inc., on behalf of its operating local exchange carriers (“LECs”) (“CenturyTel”), offers its Comments in response to the Commission’s Public Notice seeking comment in the above-captioned proceeding regarding the regulatory treatment of IP-transported calls.¹

I. Introduction and Summary

In the Notice, the Commission seeks comments on the declaratory ruling petitions filed by SBC Communications, Inc. (“SBC”) and VarTec Telecom, Inc. (“VarTec”) concerning the applicability of access charges when Internet Protocol (“IP”) technology is used to transport long-distance calls. As a general matter, CenturyTel supports SBC and agrees that the use of IP to carry long-distance calls that originate and terminate on the public switched telephone network (“PSTN”) does not affect the obligation of interexchange carriers (“IXCs”) to pay access charges. Interstate access charges are applicable to interexchange telecommunications

¹ *Pleading Cycle Established for SBC’s and VarTec’s Petitions for Declaratory Ruling Regarding the Application of Access Charges to IP-Transported Calls*, WC Docket No. 05-276 (DA 05-2514, rel. Sep. 26, 2005) (the “Notice”).

traffic, and the routing of a call using IP technology does not change its long-distance status, as the Commission ruled in the *AT&T Order*.²

CenturyTel respectfully requests that the Commission promptly resolve these petitions as follows: First, the Commission should find that using IP technology to transport long-distance calls does not obviate the responsibility of the IXC to pay access charges. Second, the Commission should find that disguising the interexchange nature of the traffic to avoid access charges violates the Communications Act. Third, the Commission should deny VarTec's request to obtain reciprocal compensation pricing for interexchange traffic, as violating the *Local Competition Order*.³ Fourth, the Commission should deny VarTec's request for ruling that terminating carriers must pay transiting charges to IXCs.

II. Access Charges Are Applicable When Using IP Technology to Transport Long-Distance Calls

The use of IP in the transmission of long-distance telecommunications traffic does not present novel issues for the FCC. The Commission resolved the basic issues raised by the two petitions in the *AT&T Order*. The Commission's analysis turns on the nature of the calls involved and the service provided to the customers. When the end-to-end nature of the service offered is long-haul transmission of ordinary long-distance calls from and to the PSTN, the service being provided is interexchange telecommunications service subject to access charges. IXCs cannot avoid these charges merely by handing off the traffic to a third-party transmission provider.

² *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order in WC Docket 02-361, 19 FCC Rcd 7457, 7458 (2004) ("*AT&T Order*").

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order in CC Docket 96-98, 11 FCC Rcd 15499, 15506 (1996) ("*Local Competition Order*").

The rules promulgated by the Commission make clear that access charges are to be paid on interstate and international telecommunications traffic that is interexchange in nature.⁴ The rule traditionally applied to IXC's, but the Commission has said that "[d]epending on the nature of the traffic, carriers such as commercial mobile radio service (CMRS) providers, incumbent LECs, and competitive LECs may qualify as interexchange carriers for purposes of this rule."⁵ In the *AT&T Order* the Commission held, "when a provider of IP-enabled voice services contracts with an interexchange carrier to deliver interexchange calls that begin on the PSTN, undergo no net protocol conversion, and terminate on the PSTN, the interexchange carrier is obligated to pay terminating access charges."⁶

The *AT&T Order* is directly applicable to the situation described by SBC. The carriers in this situation are using IP and creative routing through entities that claim not to be telecommunications carriers in an attempt to avoid paying access charges. However, using a wholesale transmission (IP-in-the-middle) provider such as Transcom or PointOne does not change the nature of the service that VarTec offers its customers. Either VarTec or one of these middle-men is holding itself out to customers as an IXC, and as such is responsible for paying access charges on the interexchange traffic SBC terminates. The outsourcing of the long-haul transmission function to a third-party provider, whether IP-based or otherwise, does not change the nature of the transmission from telecommunications to an enhanced or information service.⁷

⁴ See 47 C.F.R. § 69.5.

⁵ *AT&T Order*, 19 FCC Rcd at n. 80.

⁶ *AT&T Order*, 19 FCC Rcd at 7470.

⁷ Nor does the analysis change depending on whether a private IP network or the Internet is used for routing long-distance calls. In the *AT&T Order*, the Commission pointed out that proponents of AT&T's position failed to "explain why using the Internet, as opposed to a private IP network or some other type of network, is at all relevant to... [the Commission's] analysis of whether AT&T's specific service should be assessed interstate access charges, particularly here where

The Commission should find that VarTec, like AT&T, is using IP transmission without providing any enhanced services.

In the *AT&T Order*, the Commission considered three factors dispositive, and those factors are directly applicable to the instant petitions. In the *AT&T Order*, the Commission found that AT&T was operating an interexchange service that: (1) uses ordinary customer premises equipment with no enhanced functionality; (2) originates and terminates on the PSTN; and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology.⁸ The analysis in the *AT&T Order* applies to such services "regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport."⁹

The first factor applies to VarTec just as it did to AT&T. Like AT&T, VarTec's customers appear to use ordinary customer premises equipment and place calls in the same manner as on an ordinary circuit-switched long-distance network.¹⁰ Unlike AT&T, VarTec does not even allege any "enhanced functionality." VarTec also does not dispute that its service originates and terminates on the PSTN. The second factor therefore also is satisfied.

VarTec, like AT&T, provides customers long-distance transmission of voice calls to and from the PSTN, and the use of IP technology does not alter the type of transmission. As with AT&T, VarTec's service provides no enhanced functionality to the end user due to the use of IP

AT&T merely uses the Internet as a transmission medium without harnessing the Internet's broader capabilities." *AT&T Order*, 19 FCC Rcd at 7468. The Commission also rejected challenges to the application of interstate access charges to AT&T's specific service on the basis that access charges are above cost or inefficient. *Id.*, 19 FCC Rcd at 7468-69.

⁸ *AT&T Order*, 19 FCC Rcd at 7457-58.

⁹ *Id.* at 7458.

¹⁰ See *AT&T Order*, 19 FCC Rcd at 7466 ("End users place IP-transported calls using the same method, 1+ dialing, that they use for calls on AT&T's circuit-switched long-distance network").

technology. Rather, VarTec merely asserts that access charges are not applicable because IP-in-the-middle providers are not common carriers. However, this is irrelevant. As stated above, the nature of the end-to-end service received by the customer is not changed. Insertion of a third party does not change the end-to-end nature of the call, regardless of how it is routed. Whether or not the IP-in-the-middle provider is a common carrier, the customers are receiving an interexchange telecommunications service. Thus, the third factor in the *AT&T Order*, no net protocol conversion or enhanced functionality, appears to be satisfied as well.

III. The Communications Act Requires the Payment of Access Charges

The Commission's rules make clear that access charges are to be paid on interstate long-distance calls. When long-distance calls are routed through CLECs who in turn terminate the calls to an ILEC over local interconnection trunks, such routing undermines cost recovery for rural LECs such as CenturyTel. Rural customers would end up picking up the tab for such routing abuses. High increases in call volume require CenturyTel to expand its trunks in order to prevent trunk blockage, and that cost may be unrecovered because there is no access revenue to support it.

Local interconnection trunks are not designed to measure interexchange traffic. As a result, it has become increasingly difficult for CenturyTel to monitor and bill for this type of misrouted traffic. Intentionally routing interstate interexchange calls through local interconnection trunks is a form of fraud and theft designed to evade legitimate access charges. The FCC should clearly rule that this access charge avoidance behavior is prohibited by sections 201 and 202 of the Communications Act.¹¹

¹¹ See 47 U.S.C. §201(b) (prohibiting carriers from engaging in unjust and unreasonable practices), §202(a) (prohibiting carriers from subjecting any person to undue or unreasonable prejudice or disadvantage).

IV. Reciprocal Compensation Pricing Extends Only to Local Calls Under the *Local Competition Order*

In VarTec's Petition for Declaratory Ruling, VarTec argues that CMRS traffic should be treated as local if it is handed off to a transiting provider within an MTA. In the *Local Competition Order*, the Commission made clear that rules adopted pursuant to Section 251 of the Communications Act would not supplant access charges.¹² The *Local Competition Order* extended reciprocal compensation pricing only to local calls.¹³ Reciprocal compensation pricing applies when carriers "collaborate to complete a local call."¹⁴ CMRS-originated traffic is deemed local only if it originates and terminates within the same MTA at the time the call begins.¹⁵ VarTec is requesting local treatment of traffic that is not intraMTA but is merely handed off to a third party transmission provider within the MTA. However, the traffic VarTec describes is not intraMTA within the FCC's meaning. Handing off traffic to a third party provider to be terminated outside the MTA where the call originates cannot vitiate the interexchange and non-local nature of the call.

V. VarTec's Request for Transitng Charges Should Be Rejected

VarTec argues that terminating LECs should be required to pay VarTec for the use of VarTec's facilities to "deliver transiting traffic, when intraMTA calls that originate on the networks of third-party CMRS carriers, transit VarTec's network and the networks of PointOne, Transcom and other carriers and terminate on Southwestern Bell's and any other terminating

¹² *Local Competition Order*, 11 FCC Rcd at 16013 ("Transport and termination of local traffic for purposes of reciprocal compensation are governed by sections 251(b)(5) and 252(d)(2), while access charges for interstate long-distance traffic are governed by sections 201 and 202 of the Act").

¹³ *Ibid.* ("[R]eciprocal compensation obligations should apply only to traffic that originates and terminates within a local area").

¹⁴ *Ibid.*

¹⁵ 47 C.F.R. §51.701(b)(2).

LEC's network."¹⁶ VarTec's argument is nonsensical. VarTec never disputes that the traffic in question is interstate, interexchange traffic. VarTec argues that it is not subject to access charges because it is not transmitting telecommunications traffic, but then asks to be paid for transiting. These positions cannot be reconciled with the law.

Transiting charges and access charges are both charges that carriers pay other *carriers*. An IXC pays access charges to a terminating LEC but recovers its costs from the end users who select the IXC. Terminating LECs and originating LECs may choose to use a transiting carrier to complete local calls, in which case the terminating LEC pays transiting because they choose not to directly interconnect, and because the transiting carrier has no relationship with the end-user.¹⁷ However, transiting is a concept inherent in non-access traffic. It has no place in interexchange access.¹⁸ Terminating LECs do not pay IXCs (or the parties to whom they outsource that function) for "transiting." If VarTec were correct in this argument, it would mean that every interexchange carrier would charge the terminating LEC for transiting instead of paying terminating access charges to the LEC. VarTec's argument is inconsistent with FCC precedent and the whole access charge system, and should be rejected.

¹⁶ VarTec Petition at 12.

¹⁷ *Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a Verizon Communications*, Memorandum Opinion and Order, 16 FCC Rcd 21493, 21495 (2001) ("*Texcom Order*"); *recon. denied*, 17 FCC Rcd 6275 (2002).

¹⁸ *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking in CC Docket 01-92, 20 FCC Rcd 4685, 4737 (2005) ("Transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier's network"). *Id.* at note 341 ("The exchange of access traffic, including the joint provision of access by two or more carriers, is governed by federal and state access charge rules").

VI. Conclusion

The Commission should find that using IP-in-the-middle providers does not alter the obligation of IXC's to pay access charges. The Commission should affirm that IP-in-the-middle providers are not providing any enhanced services as alleged by VarTec. Companies that reroute interexchange calls through IP-in-the-middle providers or CLECs to make the calls seem local in nature may be fraudulently avoiding lawful access charges and violating the Communications Act. Further, the intraMTA rule should be affirmed, and VarTec's request for transiting revenue should be denied.

Respectfully submitted,

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